

Regular Session, 2012

SENATE BILL NO. 744

BY SENATOR PETERSON

HEALTH/ACC INSURANCE. Creates the Louisiana Health Insurance Exchange. (gov sig)

AN ACT

To enact Chapter 20 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:3401 through 3407, relative to health insurance; to create the Louisiana Health Insurance Exchange as an agency of the state; to provide for a board; to provide for the duties, terms, and membership of the board; to provide for the powers, duties, and obligations of the exchange; to provide relative to the hiring of employees; to provide relative to contracts; to provide relative to fees; and to provide that if certain federal laws are repealed, defunded, or declared unconstitutional by the U.S. Supreme Court, this act is repealed; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 20 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:3401 through 3407, is hereby enacted to read as follows:

CHAPTER 20. LOUISIANA HEALTH INSURANCE EXCHANGE

§3401. Purpose; legislative intent

The purpose of this Chapter is to provide for the establishment of the Louisiana Health Insurance Exchange, to facilitate the purchase and sale of qualified health plans in the individual market in this state and to provide for

1 the establishment of a Small Employer Insurance Exchange to assist qualified
2 small employers in this state in facilitating the enrollment of their employees in
3 qualified health plans offered in the small group market. The intent of this
4 Chapter is to reduce the number of uninsured citizens, provide a transparent
5 consumer driven marketplace, and assist individuals with access to programs,
6 premium assistance tax credits, and cost-sharing reductions.

7 §3402. Definitions

8 For purposes of this Chapter, the following terms have the following
9 meanings:

10 (1) "Board" means the board of directors for the Louisiana Health
11 Insurance Exchange.

12 (2) "Educated health care consumer" means an individual who is
13 knowledgeable about the health care system, and has background or experience
14 in making informed decisions regarding health, medical, and scientific matters.

15 (3) "Exchange" means the Louisiana Health Insurance Exchange
16 established pursuant to this Chapter.

17 (4) "Federal act" means the federal Patient Protection and Affordable
18 Care Act (Public Law 111-148), as amended by the federal Health Care and
19 Education Reconciliation Act of 2010 (Public Law 111-152), and any
20 amendments thereto, or regulations or guidance issued under those acts.

21 (5)(a) "Health benefit plan" means a policy, contract, certificate, or
22 agreement offered or issued by a health carrier to provide, deliver, arrange for,
23 pay for, or reimburse any of the costs of health care services.

24 (b) Health benefit plan does not include any of the following:

25 (i) Coverage only for accident or disability income insurance, or any
26 combination thereof.

27 (ii) Coverage issued as a supplement to liability insurance.

28 (iii) Liability insurance, including general liability insurance and
29 automobile liability.

1 (iv) Workers' compensation or similar insurance.

2 (v) Automobile medical payment insurance.

3 (vi) Credit-only insurance.

4 (vii) Coverage for on-site medical clinics.

5 (viii) Other similar insurance coverage, specified in federal regulations
6 issued pursuant to Pub. L. No. 104-191, under which benefits for health care
7 services are secondary or incidental to other insurance benefits.

8 (c) A health benefit plan does not include the following benefits if they
9 are provided under a separate policy, certificate, or contract of insurance, or
10 are otherwise not an integral part of the plan:

11 (i) Limited scope dental or vision benefits.

12 (ii) Benefits for long-term care, nursing home care, home health care,
13 community-based care, or any combination thereof.

14 (iii) Other similar, limited benefits specified in federal regulations issued
15 pursuant to Pub. L. No. 104-191.

16 (d) A health benefit plan does not include the following benefits if the
17 benefits are provided under a separate policy, certificate, or contract of
18 insurance, there is no coordination between the provision of the benefits and
19 any exclusion of benefits under any group health plan maintained by the same
20 plan sponsor, and the benefits are paid with respect to an event without regard
21 to whether benefits are provided with respect to such an event under any group
22 health plan maintained by the same plan sponsor:

23 (i) Coverage only for a specified disease or illness.

24 (ii) Hospital indemnity or other fixed indemnity insurance.

25 (e) A health benefit plan does not include the following if offered as a
26 separate policy, certificate, or contract of insurance:

27 (i) Medicare supplemental health insurance as defined under Section
28 1882(g)(1) of the Social Security Act.

29 (ii) Coverage supplemental to the coverage provided under Chapter 55

1 of Title 10, United States Code (Civilian Health and Medical Program of the
2 Uniformed Services (CHAMPUS)).

3 (iii) Similar supplemental coverage provided under a group health plan.

4 (6) "Health carrier or carrier" means an entity subject to the insurance
5 laws of this state and rules of the Louisiana Department of Insurance, or subject
6 to the jurisdiction of the department, that contracts or offers to contract to
7 provide, deliver, arrange for, pay for, or reimburse any of the costs of health
8 care services, including, but not limited to, a sickness and accident insurance
9 company, a health maintenance organization, a nonprofit hospital and health
10 service corporation, an entity organized pursuant to Chapter 2A of this Title to
11 provide a health care services plan, or any other entity providing a plan of
12 health insurance, health benefits, or health services.

13 (7) "Qualified dental plan" means a limited scope dental plan that has
14 been certified in accordance with state law.

15 (8) "Qualified employer" means a small employer that elects to make its
16 full-time employees eligible for one or more qualified health plans offered
17 through the Small Employer Insurance Exchange, and at the option of the
18 employer, some or all of its part-time employees, provided that the employer
19 meets either of the following requirements:

20 (a) Has its principal place of business in the State of Louisiana and elects
21 to provide coverage through the Small Employer Insurance Exchange to all of
22 its eligible employees, wherever employed.

23 (b) Elects to provide coverage through the Small Employer Insurance
24 Exchange to all of its eligible employees who are principally employed in this
25 state.

26 (9) "Qualified health plan" means a health benefit plan that has in effect
27 a certification that the plan meets the criteria for certification set by state law
28 and rules of the Louisiana Department of Insurance.

29 (10) "Qualified individual" means an individual, including a minor, who

1 meets all of the following requirements:

2 (a) Is seeking to enroll in a qualified health plan or qualified dental plan
3 offered to individuals through the exchange.

4 (b) Resides in the state of Louisiana.

5 (c) At the time of enrollment, is not incarcerated, other than
6 incarceration pending the disposition of charges.

7 (d) Is, and is reasonably expected to be, for the entire period for which
8 enrollment is sought, a citizen or national of the United States or an alien
9 lawfully present in the United States.

10 (11) "Secretary" means the secretary of the federal Department of
11 Health and Human Services.

12 (12)(a) "Small employer" means an employer that employed an average
13 of not more than fifty employees during the preceding calendar year.

14 (b) Beginning on January 1, 2016, "small employer" means an employer
15 that employed an average of not more than one hundred employees during the
16 preceding calendar year.

17 (c) For purposes of this Paragraph:

18 (i) Any person treated as a single employer under Subsection (b), (c), (m),
19 or (o) of Section 414 of the Internal Revenue Code of 1986 shall be treated as a
20 single employer.

21 (ii) An employer and any predecessor employer shall be treated as a
22 single employer.

23 (iii) All employees shall be counted, including part-time employees and
24 employees who are not eligible for coverage through the employer.

25 (iv) If an employer was not in existence throughout the preceding
26 calendar year, the determination of whether that employer is a small employer
27 shall be based on the average number of employees it is reasonably expected
28 that employer will employ on business days in the current calendar year.

29 (v) An employer that makes enrollment in qualified health plans

1 available to its employees through the Small Employer Insurance Exchange,
2 and would cease to be a small employer by reason of an increase in the number
3 of its employees, shall continue to be treated as a small employer for purposes
4 of this Chapter as long as it continuously makes enrollment through the Small
5 Employer Insurance Exchange available to its employees.

6 **§3403. Louisiana Health Insurance Exchange; creation; board; members**

7 A. There is established the Louisiana Health Insurance Exchange as a
8 nonprofit public corporation of the state of Louisiana, created to effectuate the
9 public purposes provided for in this Chapter.

10 B. The exchange shall operate subject to the supervision and approval
11 of a board of directors which shall be comprised of the following members:

12 (1) The Louisiana Commissioner of Insurance, or his or her designee.

13 (2) The Director of the Louisiana Medicaid Agency, or his or her
14 designee.

15 (3) The State Health Officer, or his or her designee.

16 (4) The chair of the House insurance committee, or his or her designee.

17 (5) The chair of the Senate insurance committee, or his or her designee.

18 (6) The chair of the House health and welfare committee, or his or her
19 designee.

20 (7) The chair of the Senate health and welfare committee, or his or her
21 designee.

22 (8) One member of the House of Representatives appointed by the
23 speaker of the House.

24 (9) One member of the Senate appointed by the president pro tempore.

25 (10) Two representatives of insurance companies that are licensed by the
26 Department of Insurance, specialize in health insurance, and are participating
27 or have committed to participate in the Louisiana Health Insurance Exchange
28 and Small Employer Insurance Exchange, one of which shall be a not-for-profit
29 company organized pursuant to Chapter 2 of Title 12 of the Louisiana Revised

1 Statutes to be appointed by the speaker of the House of Representatives and one
2 of which shall be a for-profit company to be appointed by the president pro
3 tempore of the Senate.

4 (11) One member who is an insurance agent or broker and who is an
5 independent health and life agent licensed in the state and not affiliated with
6 any health carrier or entity that delivers health care services appointed by the
7 lieutenant governor from a list of up to three names recommended by the
8 Louisiana Association of Health Underwriters.

9 (12) Two members appointed by the governor.

10 (13) One health care provider appointed by the speaker of the House of
11 Representatives from a list of up to three names recommended by the Louisiana
12 State Medical Society.

13 (14) One member appointed by the president pro tempore of the Senate
14 from a list of up to three names recommended by the Louisiana Hospital
15 Association.

16 (15) One health care provider appointed by the speaker of the House of
17 Representatives from a list of up to three names recommended by the Louisiana
18 Pharmacists' Association.

19 (16) One health care provider appointed by the president pro tempore
20 of the Senate from a list of up to three names recommended by the Louisiana
21 Dental Association.

22 (17) One health care provider appointed by the speaker of the House
23 from a list of up to three names recommended by the Optometry Association of
24 Louisiana.

25 C. The terms of legislative members of the board shall run concurrently
26 with the legislative quadrennium. Each remaining member of the board shall
27 serve at the pleasure of his or her appointing authority and until a successor is
28 named and qualified.

29 D. The membership of the board shall be inclusive and reflect the racial,

1 gender, geographic, urban/rural, and economic diversity of the state.

2 E. Individual board members shall not be liable for action within the
3 scope of their authority performed in good faith.

4 F. Board members may be reimbursed from funds of the exchange for
5 actual expenses and shall receive the same per diem as provided to state
6 employees but shall not otherwise be compensated for their services.

7 G. The board shall elect from its membership a chair and vice chair who
8 shall serve as the presiding officers of the board.

9 H. The board shall adopt rules governing times and places for meetings
10 and the manner of conducting its business. The board shall not meet less
11 frequently than once each quarter and at such other times as determined to be
12 necessary. The first meeting of the initial members of the board shall be called
13 by the speaker of the House of Representatives within sixty days of the effective
14 date of this Chapter.

15 I. The board shall adopt articles, bylaws, and operating rules within
16 ninety days after the appointment of the board.

17 J. The board, pursuant to the Administrative Procedure Act, may
18 promulgate rules necessary for the implementation and operation of the
19 exchange and shall have the authority to enforce any and all state and federal
20 laws and rules concerning the exchange.

21 K. The board may apply for and expend any state, federal, or private
22 grant funds available to assist with the implementation and operation of the
23 exchange. The board may elect to allow the exchange to apply for and expend
24 federal grant funds on its behalf, and the board may apply for and expend the
25 funds on behalf of the exchange.

26 L. The board may contract with any and all vendors necessary to assist
27 with the implementation and operation of the exchange.

28 M.(1) The board may appoint an executive director who shall:

29 (a) Be an unclassified employee of the exchange.

1 **(b) Administer all of the activities and contracts of the exchange.**

2 **(c) Supervise the staff of the exchange.**

3 **(d) Advise the board on all matters related to the exchange.**

4 **(e) Serve at the will and pleasure of the board.**

5 **(2) The board shall determine the appropriate compensation to be paid**
6 **to the executive director.**

7 **(3) The executive director may hire additional employees necessary to**
8 **operate the exchange.**

9 **N. The exchange shall:**

10 **(1) In cooperation with the Department of Insurance and the Medicaid**
11 **Agency, create and maintain an Internet website through which enrollees and**
12 **prospective enrollees of qualified health plans and qualified dental plans may**
13 **obtain standardized comparative information on such plans and enroll in such**
14 **plans.**

15 **(2) Use a standardized format for presenting health benefit options in the**
16 **exchange.**

17 **(3) Facilitate the purchase and sale of qualified health plans.**

18 **(4) Establish a Small Employer Insurance Exchange through which**
19 **qualified employers may access coverage for their employees.**

20 **(5) As deemed necessary by the board, create advisory committees to the**
21 **board consisting of stakeholders relevant to carrying out the activities required**
22 **under this Chapter.**

23 **O. The exchange may do both of the following:**

24 **(1) Contract with an eligible entity to perform any of its functions**
25 **described in this Chapter. An eligible entity includes but is not limited to an**
26 **entity that has experience in individual and small group health insurance,**
27 **benefit administration, or other experience relevant to the responsibilities to be**
28 **assumed by the entity.**

29 **(2) Enter into information-sharing agreements with state agencies to**

1 carry out its responsibilities under this Chapter, provided such agreements
2 include adequate protections with respect to the confidentiality of the
3 information to be shared and comply with all state and federal laws, rules, and
4 regulations.

5 P. The exchange may not do either of the following:

6 (1) Regulate health insurers, health insurance plans, or health insurance
7 producers.

8 (2) Act as an appeals entity for resolving disputes between a health
9 insurer and an insured.

10 Q. The exchange shall meet the following financial integrity
11 requirements:

12 (1) Keep an accurate accounting of all activities, receipts, and
13 expenditures and annually submit to the governor, the commissioner, and the
14 legislature a written report concerning the accountings by December first of
15 each year.

16 (2) In carrying out its activities under this Chapter, not use any funds
17 intended for the administrative and operational expenses of the exchange for
18 staff retreats, promotional giveaways, excessive executive compensation, or
19 promotion of state legislative and regulatory modifications.

20 §3404. Health plans

21 A. The exchange shall make qualified health plans available to qualified
22 individuals and qualified employers beginning with effective dates on or before
23 January 1, 2014.

24 B.(1) The exchange shall not make available any health benefit plan that
25 is not a qualified health plan.

26 (2) The exchange may allow a health carrier to offer a plan that provides
27 limited scope dental benefits meeting the requirements of Section 9832(c)(2)(A)
28 of the Internal Revenue Code of 1986 through the exchange, either separately
29 or in conjunction with a qualified health plan, if the plan provides pediatric

dental benefits meeting the requirements of state law and rules of the department.

§3405. Funding

A. The exchange may receive appropriations from the legislature, federal or state grant monies, or other contributions from any source to fund the establishment and operation of the exchange.

B. The exchange may charge assessments or user fees to health insurance carriers, agents, or brokers offering qualified health plans or qualified dental plans, or otherwise may generate funding necessary to support its operations provided under this Chapter.

C. The exchange shall be self-sustaining by January 1, 2015.

§3406. Authority of commissioner not superseded

Nothing in this Chapter, and no action taken by the exchange pursuant to this Chapter, shall be construed to preempt or supersede the authority of the Commissioner of Insurance to regulate the business of insurance within this state. Except as expressly provided to the contrary in this Chapter, all health insurance carriers offering qualified health plans in this state shall comply fully with all applicable health insurance laws of this state and rules adopted and orders issued by the department.

§3407. Dissolution

If the Patient Protection and Affordable 27 Care Act (Public Law 111-148), or any part thereof requiring the operation of the exchange provided in this Chapter, is repealed, defunded, or declared unconstitutional by the United States Supreme Court, this Chapter shall be repealed.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by James Benton.

DIGEST

Proposed law provides that the purpose of proposed law is to provide for the establishment of the Louisiana Health Insurance Exchange to facilitate the purchase and sale of qualified health plans in the individual market in this state and to provide for the establishment of a Small Employer Insurance Exchange to assist qualified small employers in this state in facilitating the enrollment of their employees in qualified health plans offered in the small group market. The intent of proposed law is to reduce the number of uninsured, provide a transparent consumer driven marketplace, and assist individuals with access to programs, premium assistance tax credits, and cost-sharing reductions.

Proposed law provides for definitions.

Proposed law provides that there is established the La Health Insurance Exchange as a nonprofit public corporation of the state of La., created to effectuate the public purposes provided for in proposed law.

Proposed law provides that the exchange shall operate subject to the supervision and approval of a board of directors which shall be comprised of the following members:

1. The La. Commissioner of Insurance, or his or her designee.
2. The Director of the La. Medicaid Agency, or his or her designee.
3. The State Health Officer, or his or her designee.
4. The chair of the House insurance committee, or his or her designee.
5. The chair of the Senate insurance committee, or his or her designee.
6. The chair of the House health and welfare committee, or his or her designee.
7. The chair of the Senate health and welfare committee, or his or her designee.
8. One member of the House of Representatives appointed by the speaker.
9. One member of the Senate appointed by the president pro tempore.
10. Two representatives of insurance companies that are licensed by the Department of Insurance, specialize in health insurance, and are participating or have committed to participate in the La Health Insurance Exchange and Small Employer Insurance Exchange, one of whom shall be a not-for-profit company organized pursuant to present law, to be appointed by the speaker of the House of Representatives and one of which shall be a for-profit company to be appointed by the president pro tempore of the Senate.
11. One member who is an insurance agent or broker and who is an independent health and life agent licensed in the state and not affiliated with any health carrier or entity that delivers health care services appointed by the lieutenant governor from a list of up to three names recommended by the La. Association of Health Underwriters.
12. Two members appointed by the governor.
13. One health care provider appointed by the speaker of the House of Representatives

from a list of up to three names recommended by the La. State Medical Society.

14. One member appointed by the president pro tempore of the Senate from a list of up to three names recommended by the La. Hospital Association.
15. One health care provider appointed by the speaker of the House of Representatives from a list of up to three names recommended by the La. Pharmacists' Association.
16. One health care provider appointed by the president pro tempore of the Senate from a list of up to three names recommended by the La. Dental Association.
17. One health care provider appointed by the speaker of the House from a list of up to three names recommended by the Optometry Association of La.

Proposed law provides that the board shall adopt rules governing times and places for meetings and the manner of conducting its business. The board shall not meet less frequently than once each quarter and at such other times as determined to be necessary. The first meeting of the initial members of the board shall be called by the speaker of the House of Representatives within 60 days of the effective date of proposed law.

Proposed law provides that the board shall adopt articles, bylaws, and operating rules within 90 days after the appointment of the board.

Proposed law provides that the board, pursuant to the Administrative Procedure Act, may promulgate rules necessary for the implementation and operation of the exchange and shall have the authority to enforce any and all state and federal laws and rules concerning the exchange.

Proposed law provides that the board may apply for and expend any state, federal, or private grant funds available to assist with the implementation and operation of the exchange. The board may elect to allow the exchange to apply for and expend federal grant funds on its behalf and the board may apply for and expend the funds on behalf of the exchange.

Proposed law provides that the board may contract with any and all vendors necessary to assist with the implementation and operation of the exchange.

Proposed law provides that the board may appoint an executive director who shall:

1. Be an unclassified employee of the exchange.
2. Administer all of the activities and contracts of the exchange.
3. Supervise the staff of the exchange.
4. Advise the board on all matters related to the exchange.
5. Serve at the will and pleasure of the board.

Proposed law provides that the board shall determine the appropriate compensation to be paid to the executive director. The executive director may hire additional employees necessary to operate the exchange.

Proposed law provides that the exchange shall:

1. In cooperation with the Department of Insurance and the Medicaid Agency, create and maintain an Internet website through which enrollees and prospective enrollees of qualified health plans and qualified dental plans may obtain standardized comparative information on such plans and enroll in such plans.

2. Use a standardized format for presenting health benefit options in the exchange.
3. Facilitate the purchase and sale of qualified health plans.
4. Establish a Small Employer Insurance Exchange through which qualified employers may access coverage for their employees.
5. As deemed necessary by the board, create advisory committees to the board consisting of stakeholders relevant to carrying out the activities required under this act.

Proposed law provides that the exchange may do both of the following:

1. Contract with an eligible entity to perform any of its functions described in proposed law. An eligible entity includes, but is not limited to, an entity that has experience in individual and small group health insurance, benefit administration, or other experience relevant to the responsibilities to be assumed by the entity.
2. Enter into information-sharing agreements with state agencies to carry out its responsibilities under proposed law provided such agreements include adequate protections with respect to the confidentiality of the information to be shared and comply with all state and federal laws, rules, and regulations.

Proposed law provides that the exchange may not do either of the following:

1. Regulate health insurers, health insurance plans, or health insurance producers.
2. Act as an appeals entity for resolving disputes between a health insurer and an insured.

Proposed law provides that the exchange shall meet the following financial integrity requirements:

1. Keep an accurate accounting of all activities, receipts, and expenditures and annually submit to the governor, the commissioner, and the legislature a written report concerning the accountings by December 1st of each year.
2. In carrying out its activities under proposed law, not use any funds intended for the administrative and operational expenses of the exchange for staff retreats, promotional giveaways, excessive executive compensation, or promotion of state legislative and regulatory modifications.

Proposed law provides that nothing in proposed law, shall be construed to preempt or supersede the authority of the Commissioner of Insurance to regulate the business of insurance within this state. Except as expressly provided to the contrary in proposed law, all health insurance carriers offering qualified health plans in this state shall comply fully with all applicable health insurance laws of this state and rules adopted and orders issued by the department.

Proposed law provides that if the Patient Protection and Affordable 27 Care Act (Public Law 111-148), or any part thereof requiring the operation of the exchange provided in proposed law, is repealed, defunded, or declared unconstitutional by the United States Supreme Court, proposed law shall be repealed.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 22:3401 through 3407)